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CPLR 1009: Claim by Plaintiff Against Third-Party Defendant

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Upon the recommendation of the Judicial Conference,⁶² the *Silver* decision has been codified and incorporated into the CPLR as Rule 327 by the Legislature. This provision reads:

When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

Interestingly, the *Silver* case has been applied on an intrastate basis in *Asaro v. Audio by Zimet, Inc.*,⁶³ where the Suffolk County District Court denied venue in an action arising out of a Nassau County automobile accident. All the parties involved in the action were Nassau County residents, except the individual defendant-driver, who had been served personally within that county. The court conditionally granted the defendant's motion to dismiss, stating that Suffolk County had "little if any interest in or relationship to the issues here involved."⁶⁴

The impact of the *Silver* case upon bench and bar has been immediate. It is certain that there will be further applications and refinements of the *forum non conveniens* doctrine as the courts and practitioners alike adjust to this necessary conferral of broad discretion as to the exercise of jurisdiction.

ARTICLE 10 — PARTIES GENERALLY

CPLR 1009: Claim by plaintiff against third-party defendant.

This section has been changed to permit the plaintiff to amend his complaint to raise against a third-party defendant any claim he has against that party. Prior to this amendment, the plaintiff was restricted to any claim he might have raised if the third-party defendant had been joined originally as a defendant.

The purpose of the amendment was to harmonize CPLR 1009 with related provisions of the CPLR, specifically CPLR 1008, which allows the third-party defendant complete freedom to cross-claim and

⁶² JUDICIAL CONFERENCE OF THE STATE OF NEW YORK, REPORT TO THE LEGISLATURE IN RELATION TO THE CIVIL PRACTICE LAW AND RULES AND PROPOSED AMENDMENTS PURSUANT TO SECTION 229 OF THE JUDICIARY LAW 59 (1972).

⁶³ 69 Misc. 2d 316, 330 N.Y.S.2d 25 (Dist. Ct. Suffolk County 1972) (mem.). *Accord*, *Suriano v. Hosie*, 59 Misc. 2d 973, 302 N.Y.S.2d 215 (Dist. Ct. Nassau County 1969), *discussed in The Quarterly Survey*, 44 ST. JOHN'S L. REV. 532, 588 (1970).

⁶⁴ 69 Misc. 2d at 318, 330 N.Y.S.2d at 27-28, *quoting* *Pharo v. Piedmont Aviation*, 34 App. Div. 2d 752, 310 N.Y.S.2d 120, 121 (1st Dep't 1970), *aff'd*, 29 N.Y.2d 710, 275 N.E.2d 333, 325 N.Y.S.2d 750 (1971). Dismissal was on the condition that the defendant, within thirty days, file a consent in writing that he would appear, receive all papers, and subject himself to the Nassau County District Court's jurisdiction in the action.

counterclaim against all parties, and CPLR 3019(b), which allows defendants to cross-claim against each other with absolute freedom.⁶⁵

ARTICLE 11 — POOR PERSONS

CPLR 1102: The state is responsible for indigents' publication costs in matrimonial actions.

The Appellate Division, First Department, recently held⁶⁶ that New York City was not required to pay the costs of service by publication for an indigent plaintiff in a divorce proceeding. The Appellate Division, Second Department, adopted this holding in *Jeffreys v. Jeffreys*.⁶⁷ It viewed the absence of any statutory authorization for a city to pay such costs as the decisive factor: "The fact that payment by the City for service by publication may fit a logical framework cannot substitute for the required statutory authorization for such payment by the City. . . ."⁶⁸

It is refreshing to note that this long-neglected area of law is beginning to receive appropriate attention. However, the needs of the indigent, not whether the city or the state should pay certain fees, should be the primary concern.

CPLR 1102(b): Poor persons held not entitled to free use of a stenographer for depositions before trial.

In recent years, the legislative and judicial branches of government have become mindful of the differential treatment afforded economic groups under our system of justice. The judiciary has attempted to lessen the problems indigents face in reaching the courts.⁶⁹ However,

⁶⁵ See 7B MCKINNEY'S CPLR 1009, supp. commentary at 102 (1964).

⁶⁶ *Jackson v. Jackson*, 37 App. Div. 2d 953, 326 N.Y.S.2d 224 (1st Dep't 1971), discussed in *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 768, 779 (1972). But see *McCandless v. McCandless*, 38 App. Div. 2d 171, 327 N.Y.S.2d 896 (4th Dep't 1972) (directing county to pay indigent's publication costs). *Boddie v. Connecticut*, 401 U.S. 371 (1971), mandated the removal of such monetary bars to matrimonial relief for the indigent.

⁶⁷ 38 App. Div. 2d 431, 330 N.Y.S.2d 550 (2d Dep't 1972), *rev'g* 58 Misc. 2d 1045, 296 N.Y.S.2d 74 (Sup. Ct. Kings County 1968), discussed in *The Quarterly Survey*, 44 ST. JOHN'S L. REV. 135, 139 (1969). See also *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 147, 158 (1971).

⁶⁸ 38 App. Div. 2d at 434, 330 N.Y.S.2d at 554. Citing article XVII, section 1, of the State Constitution, which provides that care of the indigent is the responsibility of the state and such of its subdivisions as the Legislature may determine, the court held further that "[u]ntil the Legislature determines that the aspect of aid to the needy here under consideration shall be provided by the City as a subdivision of the State, the obligation to pay such expenses remains with the State." *Id.* at 435, 330 N.Y.S.2d at 555.

⁶⁹ See, e.g., *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Jeffreys v. Jeffreys*, 38 App. Div. 2d 431, 330 N.Y.S.2d 550 (2d Dep't 1972); *Hotel Martha Washington Management Co. v. Swinick*, 66 Misc. 2d 833, 322 N.Y.S.2d 139 (App. T. 1st Dep't 1971); *Dorsey v. City of New York*, 66 Misc. 2d 464, 321 N.Y.S.2d 129 (Sup. Ct. N.Y. County 1971). See also *The*